

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JASON YATES,

No. C 04-02445 WHA

Petitioner,

v.

**ORDER GRANTING
REQUEST FOR CERTIFICATE
OF APPEALABILITY**

STEWART RYAN,

Respondent.

Petitioner Jason Yates filed a petition for writ of habeas corpus in this case pursuant to 28 U.S.C. 2254. By order dated Jly 14, 2008, this Court denied his petition for writ of habeas corpus. Judgment was entered in favor of respondent the same day. On August 12, 2008, petitioner filed a notice of appeal. He seeks a certificate of appealability under 28 U.S.C. 2253, Federal Rule of Appellate Procedure 22, and Ninth Circuit Rule 22-1.

A district court judge shall grant a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. 2253(c)(2). Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy Section 2253(c) is straightforward: the petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 483 (2000).

Given this standard, the Court certifies the following issues for appeal:

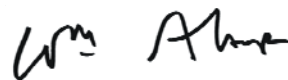
1. Whether there was ineffective assistance of trial counsel.

2. Whether there was ineffective assistance of appellate counsel.
3. Whether there was error in instructing the jury it could not return a verdict on a lesser offense without unanimously agreeing that the defendant was not guilty on the greater offense.
4. Whether there was error in instructing the jury that a witness who is willfully false in one material part of his testimony is to be distrusted in other parts.
5. Whether there was error in not instructing the jury that it must unanimously agree on the theory of first-degree murder.
6. Whether there was prosecutorial misconduct.
7. Whether there was the wrongful denial to substitute counsel for new trial motion proceedings.
8. Whether there was judicial misconduct and disparagement of defense counsel when the trial court admonished the jury that defense trial counsel made a grossly negligent misstatement of fact.

The Clerk of the Court shall transmit the file, including a copy of this order, to the Court of Appeals for the Ninth Circuit.

IT IS SO ORDERED.

Dated: September 2, 2008.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE